IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.M.JAMES

THURSDAY, THE 22ND FEBRUARY 2007 / 3RD PHALGUNA 1928

CRL.A.No. 1185 of 2001()

CC.357/1998 of JUDL. MAGISTRATE OF FIRST CLASS-V, KOZHIKODE

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APPELLANT: COMPLAINANT:

C. NARAYANAN, S/O.VELAYUDHAN
PALAKKOTTU PALLIYALIL HOUSE,
P.O., PUTHUKKODE, RAMANATTUKARA,
KOZHIKODE.

BY ADV. SRI.P.V.KUNHIKRISHNAN

RESPONDENTS/ACCUSED:

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1. THOTTIYAM ABUBACKER,
KUNNUMMAL PARAMBA HOUSE,
RAMANATTUKARA, KOZHIKODE.

2. STATE OF KERALA, REP. BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.THOMAS JOHN AMBOOKEN.

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 22/02/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

J.M. JAMES, J.

Criminal Appeal No. 1185 of 2001

Dated this the 22nd February, 2007.

J U D G M E N T

The complainant is the appellant. The complaint preferred under Section 138 of the Negotiable Instruments Act was dismissed on the ground of absence of the appellant. The accused was consequently acquitted. The same is under challenge through this appeal, after obtaining leave of this Court.

2. The contention put forward by the appellant is that he was regularly present before the court below. On the appointed date, when the case was posted, because of the traffic jam, he could not be present in time before the court below. Except this submission, there is no material available to show that he was prevented because of the traffic jam. There is no affidavit filed before me, either by the appellant or his counsel, explaining the reason why the counsel was not present, even if the appellant was held up due to traffic jam.

3. At this stage, the learned counsel appearing for the appellant submits that both the counsel, as well as the appellant were travelling from the office of the Advocate, and they could not reach in time to the court in making representation. I am not making any comment upon

the submission. In order to serve the ends of justice that the judiciary helps the community. The litigation of the year 1999 is not made to be kept in the record room of the court. Hence, I am inclined to give an opportunity to both sides to proceed with the matter.

4. Hence, I set aside the impugned order, dated 6.9.2001, and restore C.C.No.357/98, to the file of the Judicial First Class Magistrate Court-V, Kozhikode.

5. The appellant, complainant shall appear before the court below on 22.3.2007.

6. As the first respondent, accused, is not before me, despite service of notice, I direct the court below to secure his presence through coercive steps. The learned Magistrate shall dispose of the matter, within three months from the date of appearance/production of the first respondent, accused, before that court.

Criminal Appeal is allowed as above.

J.M. JAMES,
JUDGE

nj.

J.M. JAMES, J.

Criminal Appeal No. 1185 of 2001

J U D G M E N T

Dated: 22nd February, 2007.